IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2796 of 2003

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1. Bibi Rabia, Wife of Md. Kamaluddin
2(a) Md. Faique Hussain, son of Md. Kamaluddin
2(b) Md. Shaique Hussain, son Md. Kamaluddin
2(c) Md. Wasique Hussain, son of Md. Kamaluddin
2(d) Md. Wafique Hussain (Minor) son of Md. Kamaluddin
2(e) Md. Waquib Hussain (Minor) son of Md. Kamaluddin
2(f) Md. Wasit Hussain (Minor) son of Md. Kamaluddin
2(g) Md. Wasif Hussain (Minor) son of Md. Kamaluddin
2(h) Bibi Samiya Khatoon Daughter of Md. Kamaluddin
2(i) Bibi Shania Khatoon (Minor) Daughter of Md. Kamaluddin
2(j) Bibi Nagia Khatoon (Minor) Daughter of Md. Kamaluddin
2(k) Bibi Zama Khatoon (Minor) Daughter of Md. Kamaluddin

All are resident of Village Kurudih, P.S. Badaluchak, District Bhagalpur. Minors no. 5, 6, 7, 10, 11 and 12 are U/G of their mother petitioner no. 1.

.... Petitioners

Versus

1. The State of Bihar
2. Additional Member Board of Revenue, Bihar, Patna.
3. Additional Collector, Bhagalpur
4. D.C.L.R, Bhagalpur
5. Md. Muttaram, son of late sk. Bhattu
6. Abdul Halim, son of Late Sk. Phattu
7. Md. Khalid son of late Reayat
8. Bibi Darkshan, D/o- Md. Reyazuddin
9. Bibi Naz-Ara, D/o Md. Eyazuddin
   All residents of villge-Kurudih, P.O. Badluchak, P.S. Sabour, District Bhagalpur
10. Bharat Lal Modi, son of late Tilakdhari Modi
11. Satya Narayan Modi, son of Bharat lal Modi
    Both residents of Mohalla Hasanganj, P.O. Mirzan, P.S. Mojahidpur, District Bhagalpur

.... Respondent 2nd party

with

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Civil Writ Jurisdiction Case No. 2809 of 2003

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1. Md. Sudullah, son of Maulbi Md. Faruque
2. Md. Zakaullaha, son of Moulbi Md. Faruque
   residents of village Kurudih, P.O. Badaluchak, P.S. Sabour, District Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Additional Member Board of Revenue, Bihar, Patna.
3. Additional Collector, Bhagalpur

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4. D.C.L.R, Bhagalpur
5. Md. Mokanam, son of late sk. Bhattu
6. Bibi Fatima, wife of Abdul Rakib
7. Bibi Akari, wife of Md. Ahsan
8. Abdul Halim, son of Late Sk. Phattu
9. Md. Kalid son of late Reayat
10. Bibi Darkshan, D/o- Md. Reyazuddin
11. Bibi Naz-Ara, D/o Md. Eyazuddin
    All residents of villge-Kurudih, P.O. Badluchak, P.S. Sabour, District Bhagalpur
12. Bharat Lal Modi, son of late Tilakdhari Modi
13. Satya Narayan Modi, son of Bharat lal Modi
    Both residents of Mohalla Madanganj, P.O. Mirzan, P.S. Mojahidpur, District Bhagalpur

.... Respondents

with

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Civil Writ Jurisdiction Case No. 2814 of 2003

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1. Md. Iftakhar, son of Md. Badiujjama
2. Md. Mojahid, son of Md. Badiujjama
3. Md. Khali Kujjama, son of Md. Badiujjama
4. Md. Samsujjama, son of Md. Badiujjama
   All residents of village Kurudih, P.O. Badaluchak, P.S. Sabour, District Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Additional Member Board of Revenue, Bihar, Patna.
3. Additional Collector, Bhagalpur
4. D.C.L.R, Bhagalpur
5. Md. Mukarram, son of late sk. Bhattu
6. Abdul Halim, son of Late Sk. Bhattu
7. Md. Khalid son of late Reayat
8. Bibi Darkshan, D/o- Md. Reyazuddin
9. Bibi Naz-Ara, D/o Md. Eyazuddin
   All residents of villge-Kurudih, P.O. Badluchak, P.S. Sabour, District Bhagalpur
10. Bharat Lal Modi, son of late Tilakdhari Modi
11. Satya Narayan Modi, son of Bharat lal Modi
    Both residents of Mohalla Hasanganj, P.O. Mirzan, P.S. Mojahidpur, District Bhagalpur

.... Respondents

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Appearance :
(In CWJC No.2796 of 2003)

For the Petitioners	:	Mr. Satyendra Narayan Singh, Adv.
For the State	:	Mr. Mithilesh Kr. Upadhyay, AC to GP-3
For Respondent no. 5 to 9		Mr. Syed Hussain Majeed

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 02-08-2017

1. All the above stated writ applications have been filed under Article 226 of the Constitution for quashing the order dated 27.02.2003 passed by the Additional Member, Board of Revenue, Bihar, Patna in Revision Case No. 119 of 2001, 120 of 2001 and 121 of 2001 which were disposed of by the Additional Member, Board of Revenue, Bihar by the above stated common order. Since common question of law and fact are involved in all the aforesaid writ applications, the above stated three writ applications are being disposed of by this common judgment.

2. The respondents no. 5 to 9 jointly filed three separate petitions under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act") before the D.C.L.R., Sadar, Bhagalpur claiming their preemptory right in respect of plots no. 474 area 55 decimal, plot no. 786 area 53 decimal pertaining to khata no. 133 village Kurudih, district Bhagalpur on the ground that they are boundary raiyat of the aforesaid plots but respondent no. 10 and 11 being owner of the aforesaid plots transferred the said plots in favour of the petitioners executing registered sale deed dated 24.04.1984

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which was finally registered on 07.05.1984. Respondents no. 5 to 9 deposited the required amount and also attached the relevant documents with their applications. On the basis of aforesaid petitions, L.C. Case No. 17 of 1984-85, L.C. Case No. 18 of 1984-85 and L.C. Case No. 19 of 1984-85 were registered. The purchasers (petitioners) appeared in the aforesaid cases and raised their respective objections denying the right of preemption of respondents no. 5 to 9 on the ground that they are not boundary raiyat of the aforesaid plots and their petitions are time barred. The learned D.C.L.R. having considered the materials available on the record allowed all the three applications vide order dated 12.09.1986 filed under Section 16(3) of the Act directing the petitioners to execute sale deeds in their favour within thirty days from the date of order, failing which the sale deed shall get be executed through process of the court. The petitioners challenged common order dated 12.09.1986 before Additional Collector, Bhagalpur by filing three separate appeals and all the aforesaid three appeals were dismissed by the learned Additional Collector, Bhagalpur vide order dated 25.06.2001 passed in Land Ceiling Appeal Case No. 52 of 1986-87 and others. The petitioners challenged the order of Additional Collector before the Board of Revenue by filing three separate revision petitions which were heard

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and disposed of analogously by learned Additional Member, Board of Revenue passing impugned order dated 27.02.2003 against which these three separate writ petitions have been filed.

3. The stand of the petitioners is that the aforesaid plots no. 474 and 786 stand at two different places and the respondents no. 5 to 9 are not the boundary raiyat of both the aforesaid plots rather petitioners are themselves boundary raiyat of the plots in question as they got executed sale deed on 25.04.1984 of remaining area of plot no. 474 and the aforesaid sale deed was finally registered on 16.10.1984 and, therefore, they became boundary raiyat of plot no. 474.

4. Learned counsel for the petitioners challenged the impugned order on the grounds that respondent no. 5 to 9 specifically pleaded at para-4 of their petition filed under Section 16(3) of the Act that the land of Abdul Karim, Abdul Halim and Md. Khalid situate north of plot no. 474 and the land of Bibi Darakshan and Bibi Naz-Ara situate west of plot no. 786 and therefore, the aforesaid admission goes to show that above stated respondents are not boundary raiyat of all the vended plots and, therefore, the joint petitions under Section 16(3) of the Act filed by them were not maintainable but even then all the courts below ignored the aforesaid fact and passed the impugned

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order.

5. Learned counsel for the petitioners referred decision of **Ram Shankar Prasad Singh and others vs. Additional Member, Board of Revenue and others** reported in **1985 PLJR 680** wherein his Lordship held that ***"If two or more persons want to join hands in filing an application under Section 16(3) of the Act, it is necessary for all the applicants to establish that all of them are either co-sharers or adjoining raiyats of all the vended plots"***. On the strength of aforesaid decision, he submitted that in the present case, it is admitted position of the respondents no. 5 to 9 that they were not boundary raiyat of all the vended plots and therefore, their petitions under Section 16(3) of the Act were not maintainable.

6. Learned counsel for the petitioners further submitted that it is also an admitted position that petitions under Section 16(3) of the Act were filed on 29.01.1985 and prior to filing of the petitions under Section 16(3) of the Act, the petitioners had already purchased the remaining portion of plot no. 474 through the sale deed which was executed on 25.04.1984 and was registered on 16.10.1984 and accordingly, petitioners themselves became boundary raiyat of the disputed lands in respect of which petitions under Section 16(3) of the Act were filed but all the courts below ignored the aforesaid facts saying that subsequent registered sale deed was not brought on record

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before the D.C.L.R though admittedly, the aforesaid sale deed was brought on record before the appellate court. Learned counsel for the petitioners further submitted that the right of preemption accrues on the date of presentation of petition under Section 16(3) of the Act as held in the case of **Ram Chandra Srivastava and others vs. Parsidh Narain Singh and others** reported in **AIR 1971 Patna 302** wherein the Hon'ble Full Bench of this Court held as follows:-

> ***"Under Section 16(3) of the Act, the right of pre-emption which accrues to a co-sharer or a raiyat holding land adjoining the transferred land must subsist not only on the date of execution and registration of the document of transfer, but also on the date of the application which must be made within three months from the date of registration thereof. This right is ipso facto defeated if before the date of the application the transferee himself acquires the same status in relation to the transferred land as the applicant."***

7. Learned counsel for the petitioners also relied upon the decision of **Savitri Devi and others vs. the State of Bihar and others** reported in **2013(4) PLJR 360** wherein Hon'ble Division Bench of this court held that ***"If the purchaser is himself an adjacent raiyat to the land purchased, the claim of pre-emption by any other adjacent raiyat***

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shall not be maintainable." He also relied upon the decision of **Ramchabila Singh and another vs. Ramsagar Singh and four others** reported in **1969 BLJR 203** wherein their Lordships held that ***"If the transferee happens to be the adjacent raiyat in respect of some of the plots, the co-sharer cannot claim any right of pre-emption under Section 16(3) of the Act."*** Learned counsel for the petitioners further submitted that respondents no. 5 to 9 never pleaded before the D.C.L.R that they belong to one family but when the matter came before the Board of Revenue they suddenly changed their stand and pleaded before the learned Additional Member, Board of Revenue that they were of one family but in view of para-4 of their applications, the Additional Member, Board of Revenue ought to have rejected the aforesaid contention of respondents no. 5 to 9 but the learned Additional Member, Board of Revenue accepted the aforesaid contention and passed the impugned order on erroneous grounds.

8. On the other hand, learned counsel appearing for the respondents no. 5 to 9 refuted the above stated submissions arguing that all the respondents, who had filed petitions under Section 16(3) of the Act, were member of one family and therefore, it cannot be said that the respondents no. 5 to 9 are not the boundary raiyats of all the vended plots. He further submitted that all the courts below gave concurrent findings on the aforesaid fact and therefore, the concurrent

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findings of the courts below cannot be disturbed by this court while exercising power under Article 226 of the Constitution of India.

9. In support of his contention, he relied upon the decision of **Mahanth Dhansukh Giri and others vs. State of Bihar and others reported in AIR 1985 Patna 129** wherein the Hon'ble Full Bench of this court held that ***"Concurrent finding of fact cannot be interfered with in writ jurisdiction."***

10. Learned counsel appearing for the respondents no. 5 to 9 further submitted that no doubt, before filing of petitions under Section 16(3) of the Act, the petitioners had already got executed remaining portion of plot no. 474 through registered sale deed but the petitioners got executed the said sale deed with mala fide intention to defeat the preemptory right of respondents no. 5 to 9 and, therefore, even if it assumed that having got executed remaining portion of plot no. 474 petitioners became boundary raiyat of plot no. 474, then also, the subsequent sale deed shall not lend any support to the petitioners in defeating the statutory right of the respondent no. 5 to 9. He relied upon the decision of **Udai Narain Singh and others vs. the State of Bihar and others reported in 2008(2) PLJR 409** wherein Hon'ble Division Bench of this Court at para 19 held as follows:-

"19. Considering various judgments of this Court relied upon by learned counsel for the

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petitioners, I am of the view that in cases in which the vendor, vendee and pre-emptors are the same, vendee purchases pieces of land of the same plot by different sale deeds executed and registered on the same day and the pre-emptor claims to be adjoining raiyat of the whole plot or at least portions of the land purchased by the purchaser by different sale deeds, the purchaser cannot set up a claim of having become adjoining raiyat of each and other piece of land purchased on the same day by different sale deeds. The pre-emptor being adjoining raiyat from before has a superior claim over the plots of land vended on the same day, may be by two sale deeds. The purchase of two pieces of land of the same plot by two sale deeds by the purchaser on the same day cannot be thus held to be a legitimate means to defeat the provisions of law and the statutory right, although a weak one, of a common adjoining raiyat or a co-sharer. Of course, in absence of anyone or more of the five features indicated above, purchaser's claim of having become adjoining raiyat of each other plot will become a perfectly valid and legitimate defence against any claim of pre-emption."

11. Having heard the contentions of both the parties, I

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have gone through the record. It is an admitted position that joint petitions were filed in all the three separate cases by the applicants who claimed their preemptory right in respect of plots in question on the ground of co-sharer and boundary raiyat. It is also an admitted position that petitioners objected the applications filed under Section 16(3) of the Act on the ground that the applicants of the cases are not the boundary raiyat of all the vended plots in question and furthermore, they claimed that subsequently, they purchased remaining area of plot no. 474 before making claim of preemption and, therefore, they had already become boundary raiyat of the plots in question. It is an admitted position that the petitioners purchased the plots in question by two separate sale deeds though both the separate sale deeds were executed on the same day. They also claimed that plots no. 474 and 786 stand at two different places and to make claim of preemption jointly, all the applicants should be boundary raiyat or co-sharer of each and every transferred plots. It would further appear that the respondents for the first time raised this plea that they are all member of one family before the revisional court and the aforesaid plea was never taken by them either before the DCLR or before the Additional Collector. However, from perusal of impugned order of learned Additional Member, Board of Revenue, it would

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appear that learned Additional Member, Board of Revenue came to conclusion that all the preemptors are member of one family and, therefore, being co-sharers of each and every plots, they shall be treated as boundary raiyats of transferred plots. It is admitted case of the parties that plot no. 461 is situated north to plot no. 474 whereas plot no. 785 is situated west to plot no. 786. Plot no. 461 has been recorded in the name of Reayat Hussain, the grand father of applicants no. 1 to 3 of the preemption cases whereas the owners of plot no. 785 was Bibi Zubaida and Bibi Shamsunnisa who are said to have transferred their share in the aforesaid plot to applicants no. 4 and 5 of the preemption cases. So the aforesaid fact goes to show that all the applicants of preemption cases (opposite parties no. 5 to 9) are not the boundary raiyat of each of the transferred plots. However, the learned Additional Member, Board of Revenue discussed the materials and came to conclusion that the applicants of preemption cases are members of one family and co-sharers and, therefore, it shall be deemed that all the applicants of preemption cases have equal share in plot no. 461 and 785 and, therefore, they shall be treated as boundary raiyats of plots no. 474 and 786 but in my view, when the aforesaid fact was not placed either before the DCLR or before the Additional Collector, the Additional Member, Board of Revenue had

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got no jurisdiction to entertain the aforesaid fact while exercising his power as revisional authority. It is an admitted position that prior to making claim of the preemption, the petitioners had already purchased remaining area of plot no. 474 on the same day when first sale deed of plot no. 474 was executed. Therefore, it is evident that the petitioners had already become boundary raiyat of the plots no. 474. The claim of the petitioners of boundary raiyat of plot no. 474 was rejected by the learned DCLR on the ground that no sale deed in respect of purchase of remaining plot of 474 was produced before him and the learned Additional Collector as well as revisional authority too rejected the aforesaid claim on the ground that second sale deed was not produced before the DCLR rather produced before the appellate court and there was no provision to accept the document as additional evidence by the appellate court. In my view, the Additional Collector as well as revisional authority committed error in rejecting the claim of the petitioners on the aforesaid ground because Section 33 of Act gives ample power to appellate authority as well as Board of Revenue to admit the evidence. Moreover, all the provisions of C.P.C. as well as Evidence Act cannot be applied strictly in a proceeding under Section 16(3) of the Act. However, when the petitioners filed copy of second sale deed before the Additional

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Collector at appellate stage, the aforesaid copy of sale deed was kept on record and while disposing of the appeal, the Additional Collector rejected the aforesaid document and no opportunity was given to the petitioners to explain the circumstances under which they could not produce the copy of aforesaid sale deed before the DCLR.

12. It has been argued on behalf of the opposite party no. 5 to 9 that all the three courts below have given concurrent findings on the fact and, therefore, this court should not be interfered with the concurrent findings given by the courts below as held by Full Bench of this court in ***Mahanth Dhansukh Giri Case (Supra)*** but in my view, the aforesaid decision is not applicable in this case because in that decision all the courts below held that Bodh Gaya Math was a trust and the aforesaid consistent and concurrent finding was upheld up to Board of Revenue and in that situation, Full Bench of this court held that the aforesaid finding could not be interfered under writ jurisdiction but in the present case, as I have already stated that the preemptors for the first time raised before the Additional Member, Board of Revenue that they were member of one family and the learned Additional Member, Board of Revenue gave the finding in their favour. The aforesaid point had never been raised before the DCLR and Additional Collector and, therefore, it cannot be said that

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all the three courts below had given concurrent findings on the aforesaid fact. Therefore, in my view, this court has every right to reverse the aforesaid finding of Additional Member, Board of Revenue. Moreover, it has already been settled in several decisions that the right of preemption accrues on the date of filing of petition under Section 16(3) of the Act and if before exercising the aforesaid right of preemption, the purchaser himself becomes the boundary raiyat of purchased plot, another boundary raiyat will lost his right of preemption because preemption right is a very weak right. In the present case, it is admitted position that much prior to filing of petition under Section 16(3) of the Act, the petitioners had already become boundary raiyat of plot no. 474 and, therefore, the opposite party no. 5 to 9 had already lost their right of preemption in respect of plot no. 474 and so far as plot no. 786 is concerned, it is apparent from the facts of the record that all the petitioners are not the boundary raiyat of each plots and, therefore, they had no right to file joint petitions under Section 16(3) of the Act.

13. Therefore, on the basis of aforesaid discussions, I am of the opinion that learned Additional Member, Board of Revenue, Bihar, Patna committed error in passing the order dated 27.02.2003 in Revision Case No. 119 of 2001, 120 of 2001 and 121 of 2001 and

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accordingly, the aforesaid impugned order dated 27.02.2003 passed by the learned Additional Member, Board of Revenue is, hereby, quashed.

In the aforesaid manner, all the above stated writ petitions stand disposed of.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	02.02.2017
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